

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
a Corporation, Bankrupt,

Appellant,

v.

MARY WALL,

Appellee.

In the Matter of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Involuntary Bankrupt.

Upon appeal from the United States District Court
for the District of Idaho, Northern Division.

BRIEF OF APPELLEE, MARY WALL.

FRANK LANGLEY,
Attorney for Appellee.
Coeur d'Alene, Idaho,

Filed this.....day of February, 1914.

.....
Clerk.

FILED

FEB 9 - 1914

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
a Corporation, Bankrupt,

Appellant,

v.

MARY WALL,

Appellee.

In the Matter of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Involuntary Bankrupt.

Upon appeal from the United States District Court
for the District of Idaho, Northern Division.

BRIEF OF APPELLEE, MARY WALL.

FRANK LANGLEY,
Attorney for Appellee.
Coeur d'Alene, Idaho,

THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
ED, a Corporation, Bankrupt,

Appellant,

v.

MARY WALL,

Appellee.

In the Matter of THE LANE LUMBER COM-
PANY, LIMITED, a Corporation, Involuntary
Bankrupt.

Upon appeal from the United States District Court
for the District of Idaho, Northern Division.

STATEMENT OF THE CASE.

The Record herein shows the following facts:

That on December 2, 1907, the Appellee, Mary
Wall, sold and conveyed to the Lane Lumber Com-
pany, Bankrupt, the $N\frac{1}{2}$ of the $NE\frac{1}{4}$ and the $N\frac{1}{2}$ of
the $NW\frac{1}{4}$ of section 34, Twp. 49 N., Range 2 E. B.
M., Shoshone County, Idaho, for the agreed pur-
chase price of \$1350.00, at which time \$600.00 of
said price was paid, and the balance thereof, to-wit,
\$750.00, with interest, making in all the sum of
\$936.35, is now due and owing from the bankrupt to

Mary Wall and is wholly unpaid and unsecured otherwise than by the personal obligation of the buyer (Record p. 32); on June 20, 1911, a petition was filed by various creditors to have the said Lane Lumber Company, Ltd., a corporation, adjudged a bankrupt (Record p. 34); on July 29, 1911, said corporation was adjudged a bankrupt (Record p. 32); on September 22, 1911, Samuel L. Boyd qualified as trustee of the estate of the bankrupt, and has continued to and is now acting as such trustee (Record p. 32), and, as such trustee, had no notice of said vendor's lien until the same was filed with the referee, Lawrence L. Lewis (Record p. 34); on September 7, 1911, Mary Wall filed her claim against the bankrupt for said unpaid purchase price and interest as an unsecured debt (Record p. 1); on June 13, 1912, by leave of Court, Appellee filed an amended proof claiming a vendor's lien against said lands (Record pp. 4 to 8); on August 22, 1912, by leave of Court, Appellee filed a second amended proof claiming a vendor's lien against said lands for such unpaid purchase price, with interest, under Sections 3441 and 3443 of the Idaho Revised Codes (Record pp. 9 to 12); on August 29, 1912, the trustee filed Objections to said second amended proof of secured debt (Record p. 33); on July 31, 1913, the Referee overruled said Objections and allowed said second amended proof as a vendor's

lien against the above described property of the bankrupt (Record pp. 19 to 22); the appraised value of the land against which the vendor's lien was so allowed is \$500.00; on September 3, 1913, Petition for Review was filed by the trustee (Record pp. 15 to 19); on November 19, 1913, the referee filed his Report thereon with the Clerk of the United States District Court (Record pp. 22 to 25); on December 2, 1913, the Honorable Frank S. Dietrich, U. S. District Judge, rendered his Memorandum Decision affirming the referee in establishing said vendor's lien (Record pp. 25 to 31); on December 13, 1913, Findings of Fact & Conclusions of Law were caused to be filed by the District Judge (Record pp. 31 to 35); and, on December 23, 1913, Judgment thereon was filed by the District Judge (Record pp. 35 & 36).

ARGUMENT.

The facts in this case are not in dispute, and the only questions involved are questions of law. The facts and the issues involved, and the relief prayed for in this Appeal are practically the same as in the case which immediately precedes, being case No. 2363 entitled Samuel L. Boyd, as Trustee, Appellant, vs. M. K. Wall, Appellee. Both cases are prosecuted for the purpose of enforcing vendor's liens against lands belonging to the bankrupt. In the former case the

Appellee's brief on Appeal goes fully into the issues involved and the law applicable thereto; and, by reference thereto, I adopt the argument and authorities found in Appellee's brief in said case No. 2363 as my argument and authorities herein.

Briefly stated, the vendor's lien is claimed under Sections 3441 and 3443, Idaho Revised Codes, and Section 67 (d) of the Bankruptcy Act of 1898, as amended in 1910.

Section 3441, Idaho Revised Codes, reads:

"One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer".

Section 3443, Idaho Revised Codes, reads:

"The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value."

Section 67 (d) of the Bankruptcy Act of 1898, as amended, reads:

"Liens given or accepted in good faith and not in contemplation of or in fraud upon the Act, and for a present consideration, which have been recorded according to the law, if re-

cord thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by this Act."

The trustee has conceded that a vendor's lien originally vested in the claimant, and that, if lost or divested at all, it has been so lost or divested by reason of the institution of the bankruptcy proceedings, and for no other cause. And the trustee has further conceded that, prior to the amendment of the Bankruptcy Act in 1910, amending section 47, the vendor's lien might be established (Record p. 26). There, then, remains for the court to decide, only the question of the effect of said amendment. This question is fully covered by the argument and authorities found in the Appellee's brief in said case No. 2363.

Evidently for the purpose of getting away from the issues counsel for Appellant has gone outside of the record. With the exception of the statement made in the first paragraph of the argument in Appellant's brief, there is not one statement of fact, among the many made in such argment, that is based upon or supported by the Record herein. Counsel and the Court are limited to the trustee's assignments of error (Record pp. 38 to 40, and 15 to 18, respectively), and to the Findings of Fact of the District Judge (Record pp. 31 to 35).

In his Petition for Review of the referee's order allowing the vendor's lien in question (Record p. 15), the trustee assigns as error, at page 16 of the Record, "that claimant is guilty of laches for waiting until after the filing of the Petition in Bankruptcy on June 20, 1911, before attempting to assert her pretended vendor's lien." The trustee now attempts to enlarge the period covered by the objection of laches. This he cannot do. He has already conceded that at the time of the commencement of the bankruptcy proceedings the lien might be enforced (Record p. 26). And the said assignment of error in Petition for Review (Record p. 16) limits the trustee's right to complain of laches, on the part of the lien claimant to the time when the trustee has already so conceded that the vendor's lien might be enforced. Section 3443, Idaho Revised Codes, *supra*, establishes the sole manner in which the vendor's lien can be lost in Idaho.

The case of *McNeil v. McNeil*, 170 Fed. 289, cited in Appellant's brief at page 6, was an action to vacate a decree of divorce, and involved issues of fact and of law entirely different from those involved in the case at bar.

The case of *In re Ives*, 113 Fed. 911, cited in Appellant's brief at page 8, was a proceeding to vacate a decree of adjudication of bankruptcy where other rights had intervened between the entry of the de-

cree and the initiation of the proceedings to vacate; and the court held that the showing made in support of the petition to vacate was insufficient. While in the case at bar no rights have intervened.

In view of the facts involved, and of said Sections of the Statutes of Idaho, and of the Bankruptcy Act, I respectfully submit that the Judgment of the Honorable District Judge establishing a vendor's lien in favor of the claimant should be affirmed.

Respectfully submitted,

FRANK LANGLEY,

Attorney for Appellee,

Coeur d'Alene, Idaho.

Service of the foregoing Brief of Mary Wall, Appellee, is hereby accepted, by the receipt of a copy thereof, this 14th day of February,
A. D., 1914.

E. M. LaVine,

Attorney for Trustee.

copy.

